

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL  
DISTRICT.

OAH CASE NO. 2012070022

ORDER GRANTING REQUEST FOR  
CONTINUANCE AND SETTING NEW  
HEARING AND PREHEARING  
CONFERENCE DATES

Hearing in this matter is set for November 6 through 8, 2012, with a telephonic prehearing conference on October 29, 2012, at 1:30 p.m. On October 23, 2012, Student filed a “notice of stipulation,” deemed to be a request to vacate the dates in this matter and set a trial setting conference (TSC). Student’s notice did not contain any signature on behalf of the District.<sup>1</sup> On October 29, 2012, the District filed a joint request for a continuance, superseding Student’s notice, based on the parties’ intent to finalize settlement negotiations. The joint request was executed by the attorneys for both parties.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party’s excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) The Office of Administrative Hearings (OAH) considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of

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<sup>1</sup> Since Student’s notice was superseded, and not ruled on, the request to vacate all hearing dates is moot. However, counsel should note for future matters that OAH grants a request to set a TSC in only unusual cases, such as where a settlement agreement has been executed but is subject to board approval, for example.

justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Granted. All dates are vacated. This matter will be set on dates agreed to by the parties as follows:

Prehearing Conference: November 26, 2012, at 1:30 PM

Due Process Hearing: December 4, 2012, at 9:30 AM, and  
December 5 and 6, 2012, at 9:00 AM

2. Mediation and Other Matters: The parties may meet and confer to set a date to voluntarily participate in mediation prior to the hearing and notify OAH. All other matters relevant to preparing for hearing, including clarification of issues and identification of witnesses and exhibits, will be addressed at the prehearing conference.

3. Notice to Witnesses: The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

4. Settlement: Dates for the prehearing conference and the hearing will not be cancelled until a letter of withdrawal or request for dismissal with the signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should attend the scheduled prehearing conference and the hearing unless different arrangements have been agreed upon by the assigned ALJ or otherwise ordered by OAH.

IT IS SO ORDERED.

Dated: October 29, 2012

/s/

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DEIDRE L. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings